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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

THE STATE OF CALIFORNIA,

Plaintiff.

Defendant.

Case No. CV12-5874-EJD-PSG

**THIRD AMENDED COMPLAINT FOR
VIOLATIONS OF THE SHERMAN ACT,
CARTWRIGHT ACT, AND UNFAIR
COMPETITION LAW FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

COMES NOW, Kamala D. Harris, Attorney General for the State of California, and alleges the following:

INTRODUCTION

23 1. Kamala D. Harris, Attorney General, State of California, brings this action in her
24 official capacity as the chief law enforcement officer of the State of California against eBay, Inc.
25 (“eBay”) for entering into a no-solicitation and no-hiring agreement in violation of Section 1 of
26 the Sherman Act, the Cartwright Act, and the California Unfair Competition Law. Pursuant to
27 the agreement, eBay and co-conspirator Intuit, Inc. (“Intuit”) agreed not to recruit each other’s
28 employees and eBay agreed not to hire any Intuit employees, even those that approached eBay for

1 a job. This agreement harmed employees by lowering the salaries and benefits they might
2 otherwise have commanded, and deprived these employees of better job opportunities at the other
3 company.

4 2. Senior executives at eBay and Intuit entered into an evolving “handshake” agreement
5 to restrict their ability to recruit and hire employees of the other company. The agreement, which
6 was entered into no later than 2006, prohibited either company from soliciting the other’s
7 employees for job opportunities, and for over a year prevented at least eBay from hiring any
8 employees from Intuit at all. The agreement was enforced at the highest levels of each company.

9 3. The agreement reduced eBay's and Intuit's incentives and ability to compete for
10 employees and restricted employees' mobility. This agreement thus harmed employees and the
11 public by lowering the salaries and benefits they otherwise would have commanded, and deprived
12 these employees of better job opportunities at the other company.

13 4. eBay continued to enforce the agreement even though it was on notice that it was
14 potentially illegal, both from a federal consent decree in 2010 which directly addressed such no-
15 poach agreements and from California state law. There is no reason to believe that eBay has
16 ceased or would not resume such actions.

17 5. This agreement between eBay and Intuit is a naked restraint of trade that is *per se*
18 unlawful under Section 1 of the Sherman Act, 15 U.S.C. § 1, that eBay adopts or abandons at
19 will. It also violates the Cartwright Act and California’s Unfair Competition Law. Under the
20 Cartwright Act and Unfair Competition Law, the Attorney General does not need to show
21 irreparable injury before obtaining injunctions. Cal. Bus. & Prof. Code §§ 16754-54.5. The State
22 of California seeks an order prohibiting any such agreement and other relief to prevent eBay from
23 engaging in further employment-related anticompetitive activities.

JURISDICTION AND VENUE

25 6. This complaint alleges violations of the Sherman Act, 15 U.S.C. § 1. It is filed under,
26 and jurisdiction is conferred upon this Court by, Sections 4, 4C, 12, and 16 of the Clayton Act, 15
27 U.S.C. §§ 15, 15c, 22, and 26. The Plaintiff also alleges violations of State antitrust, consumer
28 protection, and/or unfair competition and related laws, and seeks civil penalties, and/or other

equitable relief under those State laws. All claims under federal and state law are based upon a common nucleus of operative facts, and the entire action commenced by this Complaint constitutes a single case that would ordinarily be tried in one judicial proceeding.

4 7. The Court has jurisdiction over the federal claims under 28 U.S.C. §§ 1331 and 1337.
5
6 The Court has jurisdiction over the state claims under 28 U.S.C. § 1337 under the Court's
7 supplemental jurisdiction because those claims are so related to the federal claims that they form
part of the same case or controversy.

8 8. Venue is proper in this District under 15 U.S.C. § 22 and 28 U.S.C. § 1391 because
9 eBay transacts business, committed an illegal or tortious act, and is found in this District, within
10 the meaning and scope of 15 U.S.C. § 22, Cal. Bus. & Prof. Code § 1672 and 28 U.S.C. § 1391(b)
11 and (c), and a substantial part of the events giving rise to the claims arose in this District.

12 9. The activities of eBay, as described herein, were within the flow of, were intended to,
13 and did have a substantial effect on the foreign and interstate commerce of the United States.

PLAINTIFF

15 10. Plaintiff is the Attorney General, in the name of the people of the State of California,
16 as *parens patriae* on behalf of natural persons residing in the state and who were employed at
17 eBay or Intuit since January 1, 2005.

18 11. The Attorney General is the state's chief law officer and is charged with enforcing the
19 state's antitrust laws, including the Cartwright Act. Cal. Bus. & Prof. Code §§ 16700 - 16770.
20 The Attorney General has a continuing interest in applications of the Cartwright Act because she
21 "may bring an action on behalf of the state or of any of its political subdivisions or public
22 agencies to recover the damages provided for by this section, or by any comparable provision of
23 federal law," subject to certain notification provisions. Cal. Bus. & Prof. Code § 16750(c).
24 Moreover, under the Cartwright Act, except as provided in the act, "every trust is unlawful,
25 against public policy and void." Cal. Bus. & Prof. Code § 16726.

26 12. The Attorney General is specifically authorized under the Unfair Competition Law,
27 Business and Professions Code Section 17200 to bring actions in the name of the People of the
28 State of California to obtain injunctive and other equitable relief, restitution, and civil penalties to

1 redress unfair, unlawful, and fraudulent business practices. *See Bus. & Prof. Code §§ 17203,*
 2 17204, 17206.

3 **DEFENDANT**

4 13. eBay is a Delaware corporation with its principal place of business in San Jose,
 5 California.

6 **CO-CONSPIRATORS**

7 14. Intuit is a Delaware corporation with its principal place of business in Mountain
 8 View, California.

9 15. Various other persons and corporations not made defendants in this complaint,
 10 including senior executives at Intuit and eBay, participated as co-conspirators in the violation
 11 alleged and performed acts and made statements in furtherance of the violation alleged.

12 **TRADE AND COMMERCE**

13 16. The information technology industry in Silicon Valley and the San Francisco Bay
 14 Area is a critical part of California's overall economy. In 2012 the Bay Area's total economic
 15 product was \$535 billion, and tech companies represented about 30% of the regional economy.
 16 California's gross state product last year was \$1.9 trillion, which means more than 8% — 1 of
 17 every 12 dollars — of economic activity produced by the entire state was produced by technology
 18 companies in Silicon Valley.

19 17. Most of eBay's employees reside in California, and California has a strong, clear,
 20 often-articulated public policy in favor of employee mobility.

21 18. Skilled employees are one reason for the success of technology companies. Firms in
 22 the same or similar industries often compete to hire and retain talented employees. This is
 23 especially true in technology industries because particular expertise and highly specialized skills
 24 sought by one firm often can be found at another firm. Solicitation of skilled employees at other
 25 companies is an effective method of competing for needed employees. eBay officials understood
 26 that recruitment is very important. Beth Axelrod, eBay's Senior Vice President for Human
 27 Resources at the time the agreement with Intuit was in effect, emphasized the importance of
 28 "cold-calling" as a recruitment tool: "The recruiting game is changing for yet another reason:

1 It's no longer sufficient to target your efforts to people looking for a job; you have to reach
2 people who aren't looking."

3 19. Constant solicitation of skilled employees from other companies is also critical for the
4 continued success of technology companies. Silicon Valley's dominance as the world leader in
5 technology results from "knowledge spillovers"— transfers of ideas and know-how from one
6 organization to another. It is commonly understood and widely discussed in Silicon Valley that
7 knowledge spillovers facilitated by the mobility of employees and the resulting bias against
8 vertical integration turn the entire industrial district into an engine of continuous innovation,
9 thereby transcending the life cycle of any single product.

10 20. California's long standing public policy in favor of employee mobility is an essential
11 element to that continuous innovation.

12 21. eBay's agreement with Intuit eliminated competition for employees. The agreement
13 harmed employees by reducing the salaries, benefits, and employment opportunities they might
14 otherwise have earned if competition had not been eliminated. The agreement also misallocated
15 labor between eBay and Intuit — companies that drove innovation based in part on the talent of
16 their employees. In a well-functioning labor market, employers compete to attract the most
17 valuable talent for their needs. Competition among employers for skilled employees may
18 improve employees' salaries and benefits and facilitate employee mobility. The no-solicitation
19 and no-hiring agreement between Intuit and eBay distorted this competitive process and likely
20 resulted in some of eBay's and Intuit's employees remaining in jobs that did not fully use their
21 unique skills. Ms. Axelrod stated that "structural forces fueling the war for talent" have resulted
22 in power "shift[ing] from the corporation to the individual," giving "talented individuals . . . the
23 negotiating leverage to ratchet up their expectation for their careers."

24 22. Instead of working harder to acquire this "critical and scarce" talent, eBay and Intuit
25 called a truce in the "war for talent" to protect their own interests at the expense of their
26 employees. eBay initially sought a limited no-solicitation agreement aimed at high-level
27 executives, but ultimately agreed to an expansive no-solicitation and no-hire agreement. eBay
28

1 valued its relationship with Intuit and the benefits eBay gained from restricting its own
2 employees' career mobility above the welfare of its employees.

3 23. Neither eBay nor Intuit took any steps to ensure that employees affected by the
4 agreement knew of its existence, or how it would impact them.

5 24. eBay knew that its agreement violated state law. It was aware that California law
6 provides that “every contract by which anyone is restrained from engaging in a lawful profession,
7 trade, or business of any kind is to that extent void.” Cal. Bus. & Prof. Code § 16600. In 2008,
8 the California Supreme Court reaffirmed that prohibition, declaring that Business and Professions
9 Code §16600 “evinces a settled legislative policy in favor of open competition and employee
10 mobility.” The Court stated that §16600 ensures “that every citizen shall retain the right to pursue
11 any lawful employment and enterprise of their choice,” and protects “the important legal right of
12 persons to engage in businesses and occupations of their choosing.” *Edwards v. Arthur Andersen*
13 *LLP*, 44 Cal. 4th 937, 946 (Cal. 2008).

THE UNLAWFUL AGREEMENT

15 25. Beginning no later than 2006, and lasting at least until 2009, eBay and Intuit
16 maintained an illegal agreement that restricted their ability to actively recruit employees from
17 each other, and for some part of that time further restricted at least eBay from hiring any
18 employees from Intuit. As alleged in more detail below, this agreement was entered into and
19 enforced at the most senior levels of these companies.

20 26. In November 2005, eBay's Chief Operating Officer, Maynard Webb, wrote to Scott
21 Cook, Intuit's Founder and Chairman of the Executive Committee, to "get [Mr. Cook's] advice
22 on a specific hiring situation and then see if we could establish some guidelines on an ongoing
23 basis." Mr. Webb asked Mr. Cook for "permission to proceed" with hiring an Intuit employee
24 who contacted eBay regarding a job, and then proposed a "structure" to Mr. Cook for future
25 situations, whereby eBay would "not actively recruit from Intuit." Under Mr. Webb's proposal,
26 for Intuit candidates "below Senior Director level" who contacted eBay regarding employment,
27 eBay would be permitted to hire them and would give Intuit "notice" only after a candidate
28 accepted a job offer. For Intuit candidates "at Senior Director level or above", eBay would not

1 make an offer unless Intuit was notified in advance. Mr. Cook rejected this proposal insofar as it
 2 allowed hiring of any employees without prior notice to Intuit, saying that “we don’t recruit from
 3 board companies, period” and “[w]e’re passionate on this.” Mr. Cook committed that Intuit
 4 would not make an offer to anyone from eBay without first notifying eBay, and said “[w]e would
 5 ask the same.”

6 27. A month later, in December 2005, Meg Whitman, the CEO of eBay at the time, and
 7 Mr. Cook discussed the competition for two employees with an eye toward eliminating that
 8 competition altogether. As Ms. Whitman told Ms. Axelrod, Mr. Cook was “slightly miffed by
 9 our recent hire of two Intuit executives.”

10 28. No later than August 2006, the initial agreement between eBay and Intuit restricting
 11 the hiring of each other’s employees was put into effect. In August 2006, when eBay considered
 12 hiring an Intuit employee for an opening at its PayPal subsidiary, Ms. Axelrod said that while she
 13 was “happy to have a word with Meg [Whitman] about it,” Ms. Axelrod was “quite confident she
 14 will say hands off because Scott [Cook] insists on a no poach policy with Intuit.” When the
 15 PayPal executive asked Ms. Axelrod to confer with Ms. Whitman, Ms. Axelrod reported back
 16 that “I confirmed with Meg [Whitman] that we cannot proceed without notifying Scott Cook
 17 first.” eBay does not appear to have pursued the potential candidate beyond this point as
 18 everyone agreed “that it’s to[o] awkward to call Scott [Cook] when we don’t even know if the
 19 candidate has interest,” demonstrating that the non-solicitation agreement had a distinct chilling
 20 effect on recruitment and hiring between the two companies.

21 29. On or about April 2007, eBay’s commitment grew into a no-hire agreement. The
 22 impetus was a complaint from Mr. Cook to Ms. Whitman that he was “quite unhappy” about a
 23 potential offer that eBay was going to make to an Intuit employee who had approached eBay.
 24 Ms. Axelrod spoke with Ms. Whitman regarding Mr. Cook’s concerns, and instructed David
 25 Knight, then eBay’s Vice President, Internal Communications, to hold off on making the offer.
 26 Mr. Knight urged Ms. Axelrod to find a way to make the offer happen, as the decision put the
 27 applicant “in a tough position and us in a bad place with California law” and left eBay “another 6
 28 months away from getting another candidate” for the position. A week later, Mr. Knight wrote to

1 Ms. Axelrod and Ms. Whitman pleading with them to at least “negotiate” any shift from a “no
 2 poaching” agreement to a “no hiring” agreement after this particular applicant was hired, as eBay
 3 “desperately need[ed] this position filled.”

4 30. While Ms. Axelrod ultimately authorized Mr. Knight to extend an offer to this Intuit
 5 employee, eBay did expand the agreement to prohibit eBay from hiring any employee from Intuit,
 6 regardless of how that employee applied for the job. A few months later, for example, an eBay
 7 human resources manager alerted Ms. Axelrod to a potential “situation” and wanted to know if
 8 eBay “continue[d] to be sensitive to Scott [Cook]’s request” or if there was “any flexibility on
 9 hiring from Intuit.” The Intuit candidate was “getting a lot of responses from managers directly”
 10 before the human resource manager’s team was involved as his “education is fantastic.” Ms.
 11 Axelrod confirmed, however, that even when an Intuit employee was “dying” to work for eBay
 12 and had proactively reached out to eBay, hiring managers had “no flexibility” and must keep their
 13 “hands off” the potential applicant.

14 31. Two eBay staffers sought to clarify the situation with Ms. Axelrod shortly thereafter.
 15 Ms. Axelrod said: “We have an explicit hands off[f] that we cannot violate with any Intuit
 16 employee. There is no flexibility on this.” The staff asked for further clarification: “This applies
 17 even if the Intuit employee has reached out and specifically asked? If so then I assume that
 18 person could NEVER be hired by ebay unless they quit Intuit first.” Ms. Axelrod confirmed this
 19 was “correct.” Ms. Axelrod similarly explained the impact of the agreement to Ms. Whitman: “I
 20 keep getting inquiries from our folks to recruit from Intuit and I am firmly holding the line. No
 21 exceptions even if the candidate proactively contacts us.” In another email exchange, Ms.
 22 Axelrod explained that she was responding to all inquiries regarding hiring from Intuit by “firmly
 23 holding the line and saying absolutely not (including to myself since their comp[ensation] and
 24 ben[efits] person is supposed to be excellent!).”

25 32. Mr. Cook was a driving force behind eBay’s no-hire agreement with Intuit. In one
 26 2007 e-mail, an eBay recruiter confirmed that the message to Intuit candidates should be that
 27 eBay was “not allowed to hire from Intuit per Scott Cook regardless of whether the candidate
 28 applies directly or if we reach out.” eBay recruiting personnel understood that “Meg [Whitman]

1 and Scott Cook entered into the agreement (handshake style, not written) that eBay would not
 2 hire from Intuit, period.” Mr. Cook and Intuit, on the other hand, agreed that Intuit would not
 3 recruit from eBay. Mr. Cook explained to one applicant who had decided to work for eBay but
 4 expressed a future interest in joining Intuit, that “Intuit is precluded from recruiting you” unless
 5 eBay has decided it does not need the employee or where the employee informs his management
 6 and then proactively contacts Intuit.

7 33. eBay insisted that Intuit refrain from recruiting its employees in exchange for the
 8 limitation on eBay’s ability to recruit and hire Intuit employees. On August 27, 2007, Ms.
 9 Axelrod wrote Ms. Whitman to complain that while eBay was sticking to its agreement to not hire
 10 Intuit employees, “it is hard to do this when Intuit recruits our folks.” Ms. Axelrod forwarded
 11 Ms. Whitman a recruiting flyer that Intuit had sent to an eBay employee. Ms. Whitman forwarded
 12 Ms. Axelrod’s e-mail to Mr. Cook the same day asking him to “remind your folks not to send this
 13 stuff to eBay people.” Mr. Cook responded quickly: “#@!%\$#^&!!! Meg my apologies. I’ll
 14 find out how this slip up occurred again....”

15 34. Throughout the course of the agreement, eBay repeatedly declined opportunities to
 16 hire or even interview Intuit employees, even when eBay had open positions for “quite some
 17 time,” when the potential employee “look[ed] great,” or when “the only guy who was good was
 18 from [I]ntuit.” eBay employees were instructed to not pursue potential hires that came from
 19 Intuit and to discard their resumes. When a candidate applied for a position and told eBay that
 20 she had left Intuit, Ms. Axelrod went so far as to write Mr. Cook to confirm that the applicant
 21 had, in fact, left the company.

22 35. The companies acknowledged that throughout the agreement, they “passed” on
 23 “talented” applicants, consistent with their anticompetitive agreement. The repeated requests
 24 from lower level employees at both companies to be allowed to recruit employees from the other
 25 firm demonstrates that the agreement denied employees the opportunity to compete for better job
 26 opportunities.

27 36. The agreement between eBay and Intuit remained in effect for at least some period of
 28 time after a United States Department of Justice (“USDOJ”) investigation of agreements between

1 technology companies that restricted hiring practices became public. One eBay employee asked
 2 another in June 2009 if she had been “able to connect with Beth [Axelrod] re our policies around
 3 hiring from Intuit with respect to” a former employee at eBay’s PayPal division who “wishes to
 4 return” and noted press reports of the USDOJ investigation. The employee responded back: “It’s
 5 a no go....too complicated. We should move to plan b.” (Ellipses in original.)

6 37. Approximately nine hundred and ninety (990) prospective eBay employees were
 7 directly affected by the agreement.

8 38. California’s Silicon Valley owes its unique success, in part, to the rapid dissemination
 9 of knowledge facilitated by the mobility of employees that turns the entire industrial district into
 10 an engine of continuous innovation. In addition to harming employees and the public, this
 11 agreement also harmed California’s economy by depriving Silicon Valley of its usual pollinators
 12 of ideas, hurting the overall competitiveness of the region.

13 39. eBay’s co-conspirator, Intuit, is prevented by consent decrees from entering into such
 14 agreements in the future. eBay, however, is not covered by those consent decrees. It is possible
 15 that eBay is party to no-hire or no-solicit agreements currently, or may enter them in the future,
 16 pursuant to its interpretation of the antitrust laws.

17 40. In part because of the 2008 *Edwards* decision, eBay was on notice that no-poach or
 18 non-solicit agreements between competing employers without business justification were contrary
 19 to California law. Moreover, any employment contract provision is unenforceable to the extent
 20 that the provision attempts to restrain a person from hiring his former colleagues after the
 21 cessation of his employment with their employer.

22 41. eBay, however, did not end its anticompetitive and anti-employee activities after
Edwards in 2008 or after *US v. Adobe* in 2009. eBay continued to be concerned with employee
 23 poaching at least through May 2011 when it filed a case against Google, Inc., claiming that
 24 former eBay employee and current Google Senior Vice President Stephanie Tilenius violated her
 25 agreement not to solicit any eBay or PayPal employees for a period of one year after her
 26 departure from eBay. She had recruited another former eBay employee, Osama Bedier, to work
 27

28

1 with her after her arrival at Google. See Complaint, PayPal, Inc. v. Google, Inc., No. 1-11-CV-
2 201863 (Cal. Sup. Ct. Santa Clara Co. May 26, 2011).

3 42. Absent injunctive relief, eBay is likely to continue this strategy of anticompetitive,
4 anti-employee behavior.

VIOLATIONS ALLEGED

6 || I. (VIOLATION OF SECTION 1 OF THE SHERMAN ACT)

7 43. The State of California hereby incorporates paragraphs 1 through 42.

8 44. eBay and Intuit are direct competitors for employees, including specialized computer
9 engineers and scientists, covered by the agreements at issue here. eBay and its co-conspirators
10 entered into a naked no-solicitation and no-hire agreement, thereby reducing their ability and
11 incentive to compete for employees. This agreement suppressed competition between eBay and
12 its co-conspirators, thereby limiting affected employees' ability to secure better compensation,
13 benefits, and working conditions.

14 45. eBay's agreement with Intuit is *per se* unlawful under Section 1 of the Sherman Act,
15 U.S.C. § 1. No elaborate industry analysis is required to demonstrate the anticompetitive
16 character of this agreement.

17 46. The no-solicitation and no-hire agreement between eBay and Intuit is also an
18 unreasonable restraint of trade that is unlawful under Section 1 of the Sherman Act, 15 U.S.C. § 1
19 under an abbreviated or “quick look” rule of reason analysis. The principal tendency of the
20 agreement between eBay and Intuit is to restrain competition as the nature of the restraint is
21 obvious and the agreement has no legitimate pro-competitive justification. It is clear that the
22 agreement would have an anticompetitive effect on employees and harm the competitive process.

23 47. For the purpose of forming and effectuating the alleged agreement, understanding, or
24 conspiracy, eBay and its co-conspirators did those things that they combined and conspired to do,
25 including, but not limited to the acts, practices, and course of conduct described, and the
26 following, among others:

- 27 a. not actively recruit Intuit or eBay employees; and
28 b. not hire Intuit employees.

1 48. The combination and conspiracy has had, among other things, the following effects:

2 a. Suppressed competition between eBay, Intuit, and their co-conspirators for

3 employees;

4 b. Limited affected employees' ability to pursue and secure new employment, as

5 well as better compensation, benefits, and working conditions;

6 c. Injured, and continues to pose a risk of injury to, the general economy of the

7 State.

8 49. Natural persons employed in the high tech industry were injured, and will continue to

9 be injured, in their business and property by lower wages and benefits, and fewer opportunities, to

10 which they would have had access, as a direct and indirect result of the actions of eBay and its co-

11 conspirators. This includes the future deprivation of competition arising from the failure of eBay

12 to discontinue its wrongful conduct until at least the USDOJ investigation, and very likely

13 afterwards as well.

14 50. Plaintiff is entitled to an injunction against eBay, preventing and restraining the

15 violations alleged herein, as well as enjoining it from engaging in similar conduct in the future.

16 eBay has demonstrated, through its continuous attempts to restrict employee mobility, that it

17 remains a serious threat to the free movement of labor.

18 51. As a direct and proximate result of eBay's violations of Section 1 of the Sherman Act,

19 natural persons residing in the State of California were injured in their business and property in

20 that they were deprived of competition between companies for employees. As a result of eBay's

21 violation of Section 1 of the Sherman Act, the State of California, acting in a *parens patriae*

22 capacity, seeks treble damages and the costs of suit, including reasonable attorneys' fees,

23 pursuant to Section 4C of the Clayton Act. 15 U.S.C. §15c(a)(1).

24 **II. (VIOLATION OF THE CARTWRIGHT ACT, BUSINESS & PROFESSIONS CODE SECTION**

25 **16720)**

26 52. The State of California hereby incorporates paragraphs 1 through 51.

27

28

1 53. eBay and its co-conspirators' contract, combination, trust, or conspiracy was
2 substantially carried out and effectuated within the State of California. This contract,
3 combination, trust, or conspiracy injured natural persons and the general economy of the State.

4 54. Beginning at least in or around January, 2006, and continuing thereafter at least up to
5 and including June, 2009, eBay and its co-conspirators entered into and engaged in a continuing
6 unlawful trust for the purpose of unreasonably restraining trade in violation of Section 16720 of
7 the California Business and Professions Code. eBay's policy of hindering employee mobility
8 threatens continued harm to the economy of the State.

9 55. These violations of Section 16720 of the California Business and Professions Code,
10 consisted, without limitation, of a continuing unlawful trust and concert of action among eBay
11 and Intuit, the substantial terms of which were to create and carry out restrictions on commerce in
12 the hiring of high tech employees.

13 56. For the purpose of forming and effectuating the unlawful trust, eBay conspired to:
14 a. refrain from recruiting Intuit or eBay employees.
15 b. refrain from hiring Intuit employees.

16 57. The combination and conspiracy had, among other things, the following effects:
17 a. Suppressed competition between eBay and Intuit for employees;
18 b. Limited affected employees' ability to secure employment, as well as better
19 compensation, benefits, and working conditions; and
20 c. Injured, and continues to pose a risk of injury to, the general economy of the
State.

22 58. California seeks an injunction in order to restore competition in the high tech
23 employee market.

24 59. As a direct and proximate result of eBay's violations of Section 16720 of the
25 California Business and Professions Code, natural persons residing in the State of California were
26 injured in their business and property in that they were deprived of competition between
27 companies for employees. As a result of eBay's violation of Section 16720 of the California
28 Business and Professions Code, the State of California, acting in a *parens patriae* capacity, seeks

1 treble damages and the costs of suit, including reasonable attorneys' fees, pursuant to Section
 2 16750(a) of the California Business and Professions Code.

3 60. The State of California also brings this claim pursuant to California Business and
 4 Professions Code Sections 16750, 16754, and 16754.5 to obtain injunctive relief and the costs of
 5 suit, including reasonable attorneys' fees.

6 **III. (FOR VIOLATION OF THE UNFAIR COMPETITION LAW BUSINESS & PROFESSIONS
 7 CODE SECTION 17200)**

8 61. The State of California hereby incorporates paragraphs 1 through 60.

9 62. Beginning at least in or around January, 2006, and continuing thereafter at least up to
 10 and including June, 2009, Defendants committed acts of unfair competition, as defined by
 11 Sections 17200, *et seq.* of the California Business and Professions Code.

12 63. Under Section 17200, *et seq.*, a business practice is *unfair* within the meaning for the
 13 Unfair Competition Law if it violates established public policy. Under Section 17200, *et seq.*, a
 14 business practice is *unlawful* and becomes independently actionable under the Unfair Competition
 15 Law if the practice violates other laws. The State of California is entitled to recovery for each
 16 violation of Section 17200 of the California Business and Professions Code.

17 64. The acts, omissions, misrepresentations, practices and non-disclosures of eBay, as
 18 alleged herein, constituted unfair competition by means of unfair, unlawful and/or fraudulent
 19 business acts or practices within the meaning of California Business and Professions Code,
 20 Sections 17200, *et seq.*, including, but not limited to, the following:

21 a. The violations of Sections 16720, *et seq.*, of the California Business and
 22 Professions Code, thus constituting unlawful acts within the meaning of Section 17200 of the
 23 California Business and Professions Code;

24 b. The violation of the public policy of free competition and employee mobility
 25 expressed by Section 16600 of the California Business and Professions Code, thus constituting
 26 unfair acts within the meaning of Section 17200 of the California Business and Professions Code.

27 65. An injunction would ensure that such conduct has ended at eBay. eBay's actions
 28 have harmed and risk continuing harm to the general economy of the State.

PRAYER FOR RELIEF

1 California requests that:

2 (A) the Court adjudge and decree that the agreement between eBay and Intuit not to
3 compete constitutes an illegal restraint of interstate trade and commerce in violation of Section 1
4 of the Sherman Act;

5 (B) the Court adjudge and decree that eBay ‘s contract, conspiracy, or combination
6 constitutes an illegal restraint of trade in violation of the Cartwright Act, Sections 16720, *et seq.*,
7 of the Business & Professions Code;

8 (C) the Court adjudge and decree that eBay’s contract, conspiracy, or combination
9 violates the Unfair Competition Law, Sections 17200, *et seq.* of the Business & Professions
10 Code;

11 (D) that Defendant be permanently enjoined and restrained from establishing any
12 similar agreement unreasonably restricting competition for employees enforcing or adhering to
13 existing agreements that unreasonably restrict competition for employees except as prescribed by
14 the Court;

15 (E) that Plaintiff be awarded restitution, including disgorgement of profits obtained
16 by Defendant as a result of its acts of unfair competition and acts of unjust enrichment and/or any
17 acts in violation of the Cartwright Act, Sections 16720, *et seq.* of the Business & Professions
18 Code, and the maximum civil penalties be allowed.

19 (E) that Plaintiff be awarded civil penalties, pursuant to California Business and
20 Professions Code Section 17206 in the dollar amount of two thousand five hundred dollars and
21 zero cents, (\$2,500.00) for each violation of the Unfair Competition Law as set forth in this
22 Complaint;

23 (F) that Plaintiff be awarded the deadweight loss (i.e. the general damage to the
24 economy of the State of California) resulting from Defendant’s illegal activities;

25 (G) that Plaintiff be awarded such other relief as the Court may deem just and
26 proper to redress and prevent recurrence of the alleged violations and to dissipate the
27 anticompetitive effects of the illegal agreement entered into by eBay; and

1 (H) that Plaintiff be awarded the costs of this action and reasonable attorneys' fees.
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4 **JURY TRIAL DEMAND**
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Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by
7 jury for all issues so triable.
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Dated: May 1, 2014

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California

10 /s/ Nicole S. Gordon
11 NICOLE S. GORDON
12 Deputy Attorney General
13 *Attorneys for Plaintiff*
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